



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,424	11/16/2005	Ole Jan Myhre	0002096USU/3053	1172
27623 7590 06/25/2008 OHLANDT, GREELEY, RUGGIERO & PERLE, LLP ONE LANDMARK SQUARE, 10TH FLOOR STAMFORD, CT 06901				
EXAMINER RABAGO, ROBERTO				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
06/25/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,424

Applicant(s)

MYHRE ET AL.

Examiner

Roberto Rábago

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3.5-20.22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3.5-20.22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 3, 5-18, 22 and 24-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3, 5-18, 22 and 24-26 are indefinite because they are outside the scope of the parent claim and fail to include all limitations of the parent claim. Specifically, parent claim 20 requires a shrink wrapped object comprising a shrink film, but the dependent claims recite only the shrink film of the parent claim.

Claim Rejections - 35 USC § 102

3. Claims 3, 5-11, 13, 15, 17, 22, 24, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/41310 for the reasons set forth in item 3 of the Office action mailed 11/20/2007.

Claim Rejections - 35 USC § 103

4. Claims 12, 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/41310 for the reasons set forth in item 4 of the Office action mailed 11/20/2007.

5. Claims 16, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/41310 in view of EP 773257 for the reasons set forth in item 5 of the Office action mailed 11/20/2007.

6. Applicant's arguments filed 3/24/2008 have been fully considered but they are not persuasive. Argument is directed to claims 19 and 20, but does not address the films of the dependent claims. Regarding the shrink wrapping process and product of claims 19 and 20, applicants argue that the polymer composition of EP '257 is different from the films of claims 19 and 20; however, the issue is not the similarity of EP '257 to applicants' claims, but the similarity of EP '257 to the compositions of WO '310. EP '257 was cited to show that one of ordinary skill in the art would readily conclude that the films of WO '310 would be useful as a shrink film, and would therefore be motivated to employ the films of WO '310 as a shrink wrapping material. WO '310 provides several examples of the recommended polymer composition; Example 1 shows a homopolymer/copolymer blend, while Example 2 shows a copolymer/copolymer blend, and therefore WO '310 discloses that both types of compositions are effective for making the disclosed films. EP '257 discloses compositions similar to Example 2 of WO '310, and therefore one of ordinary skill in the art would readily conclude that both homopolymer/copolymer blends and copolymer/copolymer blends would be useful as shrink films.

Applicants cast doubt on the ability of the blowing conditions of EP '257 to make a shrink film using the polymers of WO '310. However, this is unsupported speculation;

the making of shrink films is entirely conventional, and those of ordinary skill in the art are well versed in determining process parameters such as frost line and die diameter to obtain a shrink film.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the polymer compositions recommended as films in WO '310 in combination with the similar polymer compositions recommended as shrink films in EP '257 gives the ordinary skilled worker both the motivation and the methods to obtain a shrink film for the purpose of using it for shrink wrapping.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 1796

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberto Rábago whose telephone number is (571) 272-1109. The examiner can normally be reached on Monday - Friday from 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roberto Rábago/
Primary Examiner
Art Unit 1796

RR
June 21, 2008